

SUPREME COURT OF YUKON

Citation: *Goncharova. v. Gontcharov*, 2013 YKSC 106

Date: 20130927

Docket: S.C. No. 11-D4373

Registry: Whitehorse

BETWEEN:

EVGENIA IGOREVNA GONCHAROVA

Plaintiff

AND:

OLEG NIKOLAEVICH GONTCHAROV

Defendant

Before: Mr. Justice R.S. Veale

Appearances:

Debbie P. Hoffman
H. Shayne Fairman

Counsel for the Plaintiff
Counsel for the Defendant

REASONS FOR JUDGMENT DELIVERED FROM THE BENCH

[1] VEALE J. (Oral): This is an application by Mr. Gontcharov to have a divorce order in a family law proceeding in which claims for property have been made by both parties in the pleadings, and certainly in the supporting affidavits. It is quite common in this Court, where the parties consent, to grant a divorce order before the division of property is addressed, because husbands and wives move on in their lives and sometimes enter into new relationships before the property issues can be dealt with in court.

[2] In this case, Ms. Goncharova does not consent to the application for a divorce order before the property matters are dealt with. This raises the application of s. 15(2) of the *Family Property and Support Act*, R.S.Y. 2002, c. 83, which states:

Except by special leave of the Supreme Court, no application shall be brought under this Part, in relation to the division of family assets or other property under section 6, 13, or 14 by a person against their former spouse after the pronouncement of a decree nisi of divorce in respect of the marriage, or the pronouncement of a declaration that the marriage is a nullity, as the case may be.

[3] The only outstanding case, as I understand in this jurisdiction, is *Ngeruka v. Bruce*, 2010 YKSC 51. Although the factual circumstances in that case are much different than the case before me, the *Ngeruka v. Bruce* case was one in which the division of family assets had been fully resolved by a separation agreement and a divorce order was granted. Then, sometime later, one party came forward, I believe it was Mr. Ngeruka, wanting to get special leave to deal with the division of family assets. I was certainly of the view in that case that it was far too late to be bringing such an application and I did not grant the special leave required. However, in the case, I effectively read down the word “application” (referred in two particular paragraphs in *Ngeruka v. Bruce*) to “claims” for a division of family assets being made before a divorce order was pronounced. In my view, that is how this particular section should be interpreted so that where the parties have made their claims in the pleadings and they are before the Court, no special leave is required.

[4] In my view, s. 15(2) does not prevent a divorce order from issuing because the claims exist and there is no one that is bringing a claim afterwards. Section 15(2) does refer to an application but in para. 39 of *Ngeruka v. Bruce, supra*, I indicated as follows:

As counsel indicated there is very little case law to assist in the interpretation of the words “special leave”. However, there is no doubt that the legislature intended that claims for the division of family assets must be made before a Divorce Order is pronounced.

I repeated that in para. 43, where I said as follows:

Section 15(2) grants this court the discretion to grant special leave to a spouse to claim a division of family and non-family assets after the divorce has been concluded by the *decree nisi*, which is now called a Divorce Order under the *Rules of the Supreme Court of Yukon* effective September 15, 2008.

[5] In my view, that is how the section should be interpreted, that as long as the claims are before the Court there is no reason not to permit a divorce order to be issued prior to the finalization of the division of family assets by the Court. So I grant the Divorce Order and you can file your order accordingly, Mr. Fairman.

[6] MR. FAIRMAN: Thank you, Your Honour.

[7] MS. HOFFMAN: Thank you, My Lord.

[8] THE COURT: Thank you.

VEALE J.